

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF WASHINGTON

3 THE LAMAR COMPANY, LLC,

4 Plaintiff,

No. CV-05-0320-FVS

5 v.

6 CONTINENTAL CASUALTY COMPANY,
7 a member of CNA Insurance
Companies, and MICHAEL H.
8 RUNYAN,

9 Defendants.

10 ORDER DENYING MOTION
11 WITHOUT PREJUDICE

12 **THIS MATTER** came before the Court on the Court's review of this
13 stayed action. Plaintiff is represented by Eugene I. Annis, Mark D.
14 Mese, Todd A. Rossi, and Trevor R. Pincock. Defendant Michael H.
15 Runyan is represented by David R. East and Robert M. Sulkin.
16 Defendant Continental Casualty Company is represented by Carl E.
17 Forsberg and Patrick S. Brady.

18 **BACKGROUND**

19 In the matter of *Kootenai Electric Cooperative, Inc. v. The Lamar*
20 *Corporation*, CV-02-08891, filed in Kootenai County District Court in
21 Idaho, Kootenai Electric Cooperative, Inc. ("KEC") sought a judgment
22 against Lamar for \$9,965,752, representing the amount of the verdict
23 against KEC rendered in the Kuntz Lawsuit tried before the Honorable
24 Robert H. Whaley, CV-00-0415-RHW, in the federal district court for
25 the Eastern District of Washington. KEC and Lamar were co-defendants
26 in the Kuntz Lawsuit. On November 15, 2006, the Kootenai County
District Court granted summary judgment to Lamar on the basis of *res
judicata*, finding that KEC should have asserted its claim for

1 indemnification in the Kuntz Lawsuit. That summary judgment order has
2 been appealed by KEC to the Idaho appellate courts. In light of that
3 appeal, Judge McDonald stayed the proceedings in this lawsuit pending
4 resolution of the appeal in the Idaho courts. (Ct. Rec. 86). The
5 instant action was reassigned to the undersigned on August 1, 2007.
6 (Ct. Rec. 87).

7 **RULING**

8 While KEC filed its appellate brief with the Idaho Supreme Court
9 on May 25, 2007, and the matter is now fully briefed in that court, a
10 decision on the appeal in *Kootenai Electric Cooperative, Inc. v. The*
11 *Lamar Corporation* has yet to be rendered. (Ct. Rec. 93). In the mean
12 time, Defendant Runyan's July 10, 2006 motion for summary judgment
13 remains pending before this Court. (Ct. Rec. 48). Given the length
14 of time this case has been pending and the fact that Mr. Runyan's
15 motion could be rendered meaningless by an affirmance of the matter on
16 appeal, the Court finds that the pending motion (Ct. Rec. 48) shall be
17 **DENIED WITHOUT PREJUDICE TO ITS RENOTICE.** If the decision on appeal
18 does not render the motion for summary judgment moot, Defendant Runyan
19 may renote the motion for hearing following a removal of the stay in
20 this matter.

21 **IT IS SO ORDERED.** The District Court Executive is hereby
22 directed to enter this order and furnish copies to counsel.

23 **DATED** this 4th day of February, 2009.

24 _____
25 S/Fred Van Sickle
26 Fred Van Sickle
Senior United States District Judge